STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS
Honolulu, Hawaii

May 8, 2009

180-Day Exp. Date: June 7, 2009

Board of Land and
Natural Resources
State of Hawaii
Honolulu, Hawaii

REGARDING:	Conservation District Use Application (CDUA) OA-3494 for the Honolulu Marine Shipyard at Keehi Lagoon
APPLICANT:	Honolulu Marine, LLC.
LANDOWNER:	State of Hawaii
LOCATION:	Submerged Lands, Kapalama, Oahu
TMK:	(1) 1-2-025:24
USE:	approximately (≈) 40,300 square feet
SUBZONE:	Resource

BACKGROUND:

Honolulu Marine LLC. (HM LCC) currently operates a commercial maritime vessel construction and repair facility on public lands located at Kewalo basin leased from and under the jurisdiction of the Hawaii Community Development Authority (HCDA). HM LLC. entered into its lease in 1986 with DLNR approval with the Harbors Division, DOT (later transferred by EO to the HCDA) that extend until 2021. The existing marine vessel repair use of the existing property is inconsistent with the development plan and land use under HCDA's Kakaako Makai area plan. HCDA has requested that the HM LCC vacate its leased premises under the threat of condemnation.

With the assistance of DOBOR, it has been determined that the subject site is suitable property to relocate the shipyard facility from Kewalo basin. Furthermore, the 2005 Legislature approved the lease of submerged lands at the site to HM LLC/ pursuant to Senate Concurrent Resolution 134, SD1, HD1, Session Laws of Hawaii 2005.

DESCRIPTION OF AREA AND CURRENT USE

The site exists on ceded submerged lands of Kapalama, Oahu on the western outlet of Honolulu Harbor on the south end of the Keehi Small Boat Harbor identified as TMK: (1) 1-2-025:024. A small area of the project juts out a bit beyond the parcel further into the Kalihi Channel. The submerged portion of parcel 024 and beyond within the Kalihi

Channel affects the Conservation District. The subject submerged land lies in the Resource subzone of the Conservation District **(Exhibit 1 & 2)**.

The natural environment of Keehi was an extensive lagoon and wetland behind a broad inter-tidal reef, a near shore fishery, where the Hawaiians created and cultivated fishponds that were also utilized by later generations of people. One of the major events that led to the decline of the fisheries was the dredging of the lagoon in the 1940's to create the seaplane runway. The dredged material created the current shape of the Urban project area today. According to the people that have fish there, Nimitz Highway and non-point source pollution as the Kalihi Kai region industrialized also contributed to the decimation of the fishing grounds.

The ≈ 2.22 acres project in its entirety consists of 1.29 acres of Urban fast lands designated in flood zone AE (El 5) and ≈ 0.93 acres of submerged Conservation land. The project setting is an industrial waterfront. To the west is filled land; to the northeast and further north there are fuel storage facilities; to the south and across the Kalihi Channel is the UH Marine Education and Training Center and to the west is Keehi Lagoon **(Exhibit 3, 4 & 5)**.

The unimproved shoreline is composed of fill material including large blocks of concrete waste; dredge material coarse sand, cobbles and boulders. Offshore there is an approximately 80-footwide gentle slope extending to the 6-8' water depth. Seaward of this shelf, the bottom drops off at ≈ 2 to 1 slope to the existing channel bottom at -34 feet.

The shoreline's inland location and its close proximity to the deep channel prevent any accretion of sand along its length. It is believed that no archeological or cultural resources are present in the project area. The site is not used for boat landing and launching due to the shallow and rock foreshore. Launching facilities are readily accessible from the adjacent Small Boat Harbor.

Fishing activities along the shoreline have been recognized as a resource utilized by area residents. As interviews with community members from previous cultural and historical studies suggest, the community feels strongly about protecting the waters and fishing area.

A marine biological survey of the project site identified macro-algae, coral and other macro-invertebrates and fishes. Staff notes the abundance of species and the resilience of the aquatic species in this existing environment. Protected or regulated species that may be affected include opihi and stony corals. Live corals may be present at the southern most submerged portion of the project site. The Pacific green sea turtle was not observed but may utilize the waters near the site. Foraging seabirds may be attracted to the area due to the shoreline location and relatively flat surrounding topography because of concerns for over flights **(Exhibit 6)**.

Keehi Lagoon is listed by the DOH-CWB as an impaired water body for turbidity, total nitrogen and chlorophyll. Levels of these parameters likely exceed State criteria at any time.

Existing pedestrian views of the ocean from street level along the Sand Island Access Road are limited by improvements and topography along the road. Existing fuel storage tanks and other improvements of adjacent properties and other elevated structures in and around the Sand Island industrial area already hinder views westward and mauka from vantage points around the site. According to the applicant, the proposed height of the facility building and other shipyard related structures will be below the established 60-foot maximum building height limit for the I-3 waterfront industrial zoning of the site.

PROPOSED USE

The improvements planned allow for the use of the site as a small boat shipyard. Because of the nature of the facility, it is necessary to be adjacent to the ocean and deep-water access. Within the Conservation District, the proposed project will involve the filling of $\approx$ 23,000-ft^2 of submerged land to provide adequate space for construction and allow movement of boats from a floating dry dock onto the facility. The project in its entirety includes construction of a 120'x 64' floating dry dock, a 135' x 30' finger pier and a 40' x 200' two-story combination office building, storeroom and fabrication shop. Improvements will include grading, paving, backfilling, installation of a chain-link fence along the perimeter of the property and provision of utilities (water, drainage, sewage, electricity) and security lighting **(Exhibit 7, 8 & 9)**.

The seaward edge of the facility will be stabilized with sheet pile bulkheads or similar method, backfilled and paved to provide a stable work surface. Backfilling is necessary to provide adequate depth of water to operate the floating dry dock. The seaward edge shall be designed by a qualified marine and/or civil engineer to prevent coastal and storm water-generated erosion on adjacent shoreline areas of the facility. Imported fill will be limited to clean and uncontaminated material. Backfill activities will involve installation of steel sheet-pile bulkhead at the seaward edge of the site; and filling, grading and tamping down of the area within the bulkhead with recycled and or clean imported fill material.

The fill and pier construction will impact coral colonies at the site in the form of direct impact to colonies within the work area and from burial by sediment plumes associated with construction activities to nearby colonies. Mitigation to ensure against adverse impacts to corals will involve mapping and further study of the location, relative distribution and species of corals present at the site. As required, a coral protection plan will be prepared as part of the Department of the Army and Section 401 permit applications.

The shoreline along the facility will be fenced to secure the property and to prevent public entry to maintain public safety from the movement and use of machinery and heavy equipment associated with shipyard operations. Fishing from this location will need to be prohibited. The area of secured shoreline will be approximately 260 linear feet in length. An access easement to the eastern boundary of the site will be maintained allowing access to the area fronting the Tesoro tank farm site and the Sand Island Bridge. Shoreline access along the western boundary of the site will continue to be provided from the Keehi Lagoon Small Boat Harbor and will not affect fishing activities

The Kalihi Channel is approximately 500-feet wide up to the location of the Sand Island Bridge. Should the Channel be reopened in the future to accommodate maritime traffic, it is believed that sufficient space will be available to accommodate ships as well as smaller vessels as ≈400-feet of channel width will be maintained with the planned finger pier and floating dry dock in place.

Operations

The operational activities will include the construction of new vessels and the repair and maintenance of maritime vessels owned by P & R Water Taxi, Ltd., the United States Navy, and other government and private parties involved in marine research, fishing and commercial tugboat and barge services.

The majority of construction and maintenance activities on the exterior surfaces of boats will occur in the yard area. Boats will be moved to and from the facility and floating dry dock using a wheeled dolly and tractor and crane to facilitate movement. Movement of boats from the yard to the ocean will be accomplished by loading the boat onto the wheeled dolly and rolling it onto the floating dry dock. A tractor will be used to facilitate moving the dolly supported boat. The floating dry dock will be flooded and submerged to allow the boat to float freely into the Kalihi Channel. Seawater inside the dry dock will be pumped out to bring the dry dock back to the surface as required.

The dry dock dimensions are 64' wide x 30' high by 120' in length. The dry dock will be mobilized from one side of the finger pier to the other to bring boats on and to the yard. Movement of the dry dock will be through the use of a tug and/or workboats as required to maintain control. The floating dry dock will incorporate a filtration system to ensure appropriate handling of sea water that is used for ballast as the dock is raised and lowered during boat repair and maintenance activities.

Maintenance activities on boats tied to the finger pier will be limited to topside work only. This would include steel preservation, steel renewal, coating, plumbing, electrical and electronic repairs and machinery repairs.

Mitigation measures to ensure protection of water quality will be provided through the various permits administered by the Department of Health under the National Pollutant Discharge Elimination System (NPDES) permits (Discharges of Storm Water Associated With Industrial Activities, Discharges of Storm Water Associated With Construction Activities, Hydro-testing Discharges, Discharges Associated With Construction Activity Dewatering) and the Section 401 Water Quality Certification. In addition, the Department of the Army permits for Section 404, Clean Water Act and the Section 10, Rivers and Harbors Act also reviews mitigation measures to address aquatic environmental concerns. These permits incorporate BMPs and good housekeeping practices during and after construction to minimize adverse impacts to the marine environment.

The proposed project is not anticipated to adversely affect the use of either the Small Boat Harbor or the Kalihi Channel.

Alternatives

Alternative sites include Honolulu Harbor and the Kalaeloa Barbers Point Harbor. Barbers Point did not meet criteria such as the availability of a long-term lease, basic utility infrastructure and Honolulu Harbor has a shortage of space with the exception of the proposed site.

The no action alternative would involve the continued operation of the Kewalo Shipyard until operations are requested to vacate the HCDA site. Closure would force maritime vessels to seek maintenance elsewhere and construction of larger tugboats would need to be met by US mainland shipyards.

SUMMARY OF COMMENTS

This application was referred to the following agencies for their review and comment: the Federal: Department of the Interior-Fish & Wildlife Service, Department of Homeland Security's Coast Guard and the Department of the Army Corps of Engineers; the State: Department of Land and Natural Resources Divisions of: Aquatic Resources, Boating and Ocean Recreation, Conservation & Resource Enforcement; the Department of Transportation-Harbors Division, the Department of Health, the Office of Hawaiian Affairs, the Office of Environmental Quality Control and the University of Hawaii's Marine Education & Training Center; the City: Department of Planning and Permitting and the Kalihi-Palama Neighborhood Board. In addition, this CDUA was also sent to the nearest public library, the Kalihi-Palama State Library to make this information readily available to those who may wish to review it.

Comments were received by the following agencies and summarized by Staff as follows:

FEDERAL

DEPARTMENT OF HOMELAND SECURITY

U.S. COAST GUARD (USCG)

Please confirm if the plan is to establish one or two 120' x 64' floating dry docks.

33 Federal Code of Regulation 153.203 requires reporting of spills or discharge of oil and hazardous substances to the National Response Center or the nearest U.S. Coast Guard facility.

Please be aware that the proposed location is inside the Honolulu Harbor Security Zone and adjacent to the Kalihi Channel and Keehi Lagoon Security Zones.

Applicant's response

This confirms that only one dry dock is planned. We note your comments regarding spills or discharge of oil and hazardous substances and shall comply with the Federal Code of Regulations.

Contact was made with the US Coast Guard for clarification regarding USCG requirements for in water uses in the area of the proposed project and understand the following:

- The waters fronting the proposed shipyard are designated as Security Zones of the Honolulu Harbor, Kalihi Channel, and Keehi Lagoon that are subject to regulation. Use of the waters within the larger Honolulu Harbor channel may occasionally be restricted from use. Should this be necessary the USCG will broadcast an advance alert;
- Advance notification of the movement of vessels from the dry dock and finger pier should be made to the Aloha Tower Harbormaster on VHF radio. The USCG asks that this notification be made 1 to 2 days prior to the activity;
- According to 33 CFR Part 165.1407 Security Zones, Oahu: Hawaii, the enforcement or suspension of enforcement of the security zones may be made whenever the Maritime security (MARSEC) level, is raised to 2 or higher; or at the call of the Captain of the Port.

Honolulu Marine LLC understands and will comply with these use restrictions.

STATE OF HAWAII

DEPARTMENT OF HEALTH

Please refer to our comments made on the Draft Environmental Assessment (DEA). We strongly recommend that Standard Comments be reviewed on our website. Any comments specifically applicable to this project should be adhered to.

Applicant's Response

We generally concur with the recommendations of the DOH comments within the DEA. Honolulu Marine LLC, will continue with the coordination of this project with the DOH to ensure that all necessary environmental regulations are complied with.

DEPARTMENT OF LAND AND NATURAL RESOURCES

DIVISION OF AQUATIC RESOURCES (DAR)

DAR notes a number of measures have been propose to reduce potential impacts to the marine and near shore environment and support the use of silt curtains and other means to reduce sedimentation and other impacts to the benthic community. Concerns that DAR has are as follows:

Consistent use: With respect to whether the proposed land use is consistent with the purpose of the conservation district, the response states that the use is consistent with industrial use for which the land is zoned. This is clearly not the same as conservation. While it is possible that the purpose of the industrial water front and the conservation district are incongruent, it appears that the proposed use is not consistent with conservation purposes either that does not make new developments that are also

inconsistent more attractive from a resource conservation stand point. Also, other nearby operations do not intrude upon submerged lands as the proposed project does.

Harvested species: Opihi were recorded at the site during the environmental assessment. It was suggested that no negative impacts to this population are expected as a result of the proposed project. However, it is unclear what the basis is for this optimism, as no reason is offered as to why the opihi population would be unaffected. This statement needs to be supported in order to be evaluated. There are very few opihi on Oahu, so each extant population, regardless of size, is particularly important from a management perspective.

Coral: Because it is expected that the proposed project will directly impact live coral colonies, DAR will require a complete coral protection plan to evaluate the proposed projects immediate impact on corals. Until this plan has been completed and reviewed, it is not possible to make a definitive determination with respect to this impact. As it is illegal to kill or injure coral colonies, any impact may need to be addressed through remediation or other measures.

In addition to immediate concerns associated with turbidity and sedimentary deposition during construction activities, DAR is also concerned with long-term indirect effects of construction and repair of boats on nearby coral colonies and associated fish communities. In spite of the use of BMPs, it is likely that material from standard construction and repair operations will escape to the surrounding environment. The appearance of the present Honolulu Marine Shipyard indicates that this is not unlikely to occur.

The water quality and biological survey included in the EA makes a rather spurious suggestion that *Pocillapora domicrnis* is not a matter of concern because it is often found in lagoons and is therefore resistant to sedimentation. Even if that were indisputably the case, that does not mean it is adapted to pollutions such as solvents, copper (mentioned in the EA for sandblasting) or ferrous metals that could escape into the environment in spite of BMPs. Trace amounts of some pollutants that have leached from shipwrecks have resulted in death of nearby coral communities and overgrowth by algae. *Lyngbya majuscule,* noted at the site can become highly abundant and dominate reef habitats under such conditions. Long-term accumulation of such pollutants could occur as a result of normal business activates of Honolulu Marine and impact communities of corals, benthic organisms and fish.

Monitoring: The Office of Hawaiian Affairs recommended that Honolulu Marine institute long-term biological and ecological monitoring to assess the effectiveness of BMPs and associated condition of marine communities. DAR concurs with this recommendation. Although there are other potential sources of pollutants in Honolulu Harbor and Keehi Lagoon area, a well-designed monitoring program should be able to resolve the relative influence of potential sources of specific contaminants.

Sea level rise: DAR notes that the proposed site on Keehi Lagoon is currently listed at 3-5 feet elevation. This is approximately the sea level rise predicted to occur as a result of global warming in the coming decades. Although the Keehi site was selected for its potential as a long-term location, we wonder whether such a pattern will adversely affect

operations and necessitate additional substantial additions to the current layout or a future change in location.

Applicant's Response

The proposal would benefit the public through the provision of an important shipyard facility that would support Hawaii's self-sufficiency in the construction, maintenance, and repair of marine vessels. Regarding the Conservation District, a number of mitigation measures have been identified in the projects Final EA that will address the Conservation District purpose and objectives that is to promote the long-term sustainability and the public's health, safety and welfare.

AECOS, Inc., the preparers of the marine biological assessment indicated that one individual ophi was identified at a location outside of the Kalihi Channel that was closer in proximity to the Keehi Small Boating facility. Other locations within and adjacent to the project site were investigated with no other opihi populations forum. Opihi are generally found in locations with a more vigorous wave regime than would be provided within the relatively calm waters of Kalihi Channel, which may in part account for their relatively calm waters of Kalihi Channel, which may in part account for their relative rarity. It is possible that the lone individual observed may be preset due to the wave action induced by passing maritime vessels and not necessarily naturally occurring wave conditions.

Project mitigation to reduce the potential for indirect impacts to opihi and other marine organisms will involve the use of silt curtains and other measures as indicated in the project EA. We expect that other mitigation and monitoring procedures will be developed with the DOH, Army Corps of Engineers (ACE), and other agencies as a part of the ACE permit and Section 401 Water Quality Certification.

A Coral Protection Plan will be prepared separately for review by DAR. Although the specific schedule for preparation of the study and plan is not finalized we anticipate the document will prescribe the following:

(1) Quantitative evaluation, including mapping, of coral coverage at the site;
(2) An assessment of the direct and indirect potential for construction and post-construction impacts;
(3) The development of appropriate mitigative measures including the use of silt screens, coral relocation/transplantation, or other measures as coordinated through the DAR. Ideally, the best situation will be to allow the installation of silt screens during construction. Only if it is unavoidable, would relocation or transplantation be considered; and
(4) Monitoring to ensure the performance of the mitigation measures.

In addition to the applicant's intention to coordinate with the DAR for construction and use of the proposed project, water quality concerns will also be addressed through the Section 401 Water Quality Certification as regulated by the State DOH and the Department of the Army Permit. As part of the permitting process the project, including its potential for impacts to water quality will be required to be coordinated with agencies

including the DAR, DOH, Coastal Zone Management, US Fish and Wildlife Service and the National Marine Fisheries Service. Water quality monitoring will be performed as a part of the permitting process.

The project site and most locations within the Honolulu Harbor are anticipated to be able to handle a small increase in sea level rise, but could not be expected to continue harbor related operations with a rise of 3-5 feet or more. Should this occur many uses would be forced to cease operations and vacate the area.

Contingency planning for a major rise in sea level would require that the shipyard foundation be raised above the anticipated level of the future ocean. Currently, the estimated level of rise varies widely and there are no public policy guidelines or regulations that have been put into place to assist industry or to guide the development of coastal dependent facilities. Therefore, Honolulu Marine has planned for the use of the site based on the existing regulatory framework for uses within the Honolulu Harbor

OAHU DISTRICT LAND OFFICE

DOBOR needs to revise the EO (Executive Order) boundary to accommodate the additional submerged lands.

Applicant's Response

Honolulu Marine LLC. acknowledges this requirement and will file the necessary documentation to amend the EO boundary.

CONSERVATION AND RESOURCE ENFORCEMENT

No Comments

DEPARTMENT OF TRANSPORTATION

HARBORS DIVISION

As the parcel is adjacent to our commercial harbor, please update the construction schedule so that we are aware of the in-water and landside construction schedule.

Applicant's Response

The Department of Transportation will be consulted prior to any work proceeding on this project.

OFFICE OF HAWAIIAN AFFAIRS

The project involves filling in ceded land in the conservation district. TMK: (1) 1-2-025:024 is listed in the DLNR Ceded Land Inventory and all submerged lands are considered to be ceded. As such, we request that the land be treated with the respect due as the land is part of the 1.8 million acres of land that belong to the Hawaiian monarchy

and was transferred to the state when Hawaii became a US state. OHA urges that future documents identify the project area as ceded land so that their special status is known to others and to facilitate their continued registry and the creation and maintenance of an accurate ceded lands inventory. OHA is entitled to a percentage of all revenue generated on this land that the DLNR will collect in lease payments generated from this proposed project.

OHA shares the applicants concern about the potential effects that the project may have on access to fishing and interference with outrigger canoe paddling, both of which are practiced in the project area. We note these constitutionally protected rights and ask the OCCL to ensure through this CDUA process that these rights are not infringed upon.

OHA notes the closing off of 100' of shoreline. The Applicant proposes access on both sides of the project. OHA recommends this be a condition of the permit.

OHA notes, "Very limited community consultation was carried out for this project that consisted of talking story with a few fisherman of the project area." OHA recommends consultation with the canoe halau in the area as well as the Polynesian Voyaging Society, as both may be affected. We share the U.S. Coast Guard's concern regarding the potential narrowing of the Kalihi channel due to the project. Has the Department of the Army assessed the project?

OHA appreciates that any landscaping will involve native species, earth-toned paints are used for the proposed facilities and energy-reducing fixtures are proposed.

OHA notes the existence of heavily contaminated soil at the project site and the applicant's soil management plan for the safe handling of contaminants. OHA requests that OCCL follow up on the soil sampling and stringent Best Management Practices (BMPs) and monitoring on this CDUA. OHA recommends that a soil management plan be created to outline procedures for the handling of potentially impacted soils or groundwater at the site during construction and after. OHA feels that a determination of contaminated areas should be made. If the project is allowed to go forward, remediation of the contaminated areas before construction will likely be necessary. OHA requests that fugitive dust be controlled.

OHA suggests that the application be conditioned upon water quality monitoring in the area. Long-term monitoring would be useful in determining the effectiveness of the BMPs and treatment train, the on-site drainage filtration system, the remediation of contaminants in the area and the treatment system incorporated into the dry dock.

As Federal and State agencies prepare for sea level rise, has the applicant considered and designed for the potential affects?

OHA notes some impacts to coral in the area and requests the classification of the marine bottom ecosystem. OHA suggests that the live coral colonies be relocated. We urge that there be no net loss policy of coral formations from this action. We suggest that the applicant provide additional coral habitat to form, if possible. OHA notes that State law prohibits the breaking or damaging of any stony coral including any reef or mushroom

coral and the breaking, taking or damaging of any rock or coral to which marine life of any type is visibly attached.

Applicant's Response

We acknowledge your comments regarding ceded lands. Honolulu Marine LLC will work with the DLNR through the CDUA process to maintain the use of the area that is consistent with the preservation of Native Hawaiian Rights.

We appreciate the recommendations of consultation with the canoe halau that may use this area and the Polynesian Voyaging Society. We will consult with these parties to ensure that any concerns be properly addressed.

The use of a portion of the Kalihi channel for the proposed project is not anticipated to disrupt the existing use of the channel based on: (1) the two bridges that cross the Kalihi channel are presently fixed in place. One of the bridges was previously used as a drawbridge but has since ceased operations and has become fixed in place. The other bridge was installed as a fixed bridge; and (2) there will remain approximately 400-feet in channel width that would be maintained for navigational purposes. As required, all work associated with the use of the proposed drydock will be temporarily halted when there is navigational use of the channel. The Department of the Army, Corps of Engineers is a consulted party to this project.

The management of soils at the site will be in accordance with applicable Federal and State laws. This may include measures as described above, with the possibility of further detailed requirements to maintain environmental quality of the waters of Honolulu Harbor. Dust control will be a part of the planned mitigation measures during construction.

The water quality suggestion is noted. The Department of Health will be consulted to establish the sufficiency of future water quality monitoring that is required for this project.

In regards to sea level rise, please see our response to the DLNR Division of Aquatics. Your comments regarding coral are noted. Compliance with all requirements for the protection of marine resources will be coordinated with the DLNR and the Department of Health (for the protection of estuarine [harbor] water quality).

CITY AND COUNTY OF HONOLULU

DEPARTMENT OF PLANNING AND PERMITTING (DPP)

On November 12, 2008, the Honolulu City Council granted Special Management Area (SMA) Use Permit (Resolution No.08-229, CD1) to Honolulu Marine LLC, to develop a commercial shipyard at the site. The approval was subject to several specific conditions, including obtaining a shoreline setback variance and approval from the State DOH for a soils management plan, installation of vertical screening landscaping and other standard conditions.

The shoreline was not yet certified at the time of the processing of the SMA permit. Should the shoreline be determined as the mouth of a harbor, the site would not be subject to the 40-foot shoreline setback and a shoreline setback variance (SV) would not be required. Should the shoreline be determined to be along the project site, a SV would be required from the DPP. As the shoreline has not been certified, it remains unclear if the applicant must obtain an SV.

Applicant's Response

An application for a shoreline survey certification has been filed with DLNR. The competed shoreline survey will be filed with the shoreline setback variance application upon completion. The soils management plan, installation of vertical screening landscaping, and other standard conditions will also be complied with.

ANALYSIS

After reviewing the application, by correspondence dated December 9, 2008, the Department has found that:

1. The proposed use is an identified land use in the Resource subzone of the Conservation District, pursuant to the Hawaii Administrative Rules (HAR) §13-5-25, R-6 MARINE CONSTRUCTION (D-1) Marine construction, dredging, filling, or any combination thereof of submerged lands. Please be advised, however, that this finding does not constitute approval of the proposal;

2. Pursuant to §13-5-40, HAR, a Public Hearing will be required as the shipyard is a commercial operation;

3. In conformance with Chapter 343, Hawaii Revised Statutes (HRS), as amended, and Chapter 11-200, HAR, the Final Environmental Assessment has been reviewed and accepted by the Department on February 4, 2008 and notice was published in the February 23, 2008 issue of the Environmental Notice.

4. On November 12, 2008, the Honolulu City Council approved Special Management Area Use Permit (2008/SMA-42) for the Honolulu Marine Commercial Shipyard.

A Public Hearing was scheduled for January 20, 2009 at 6 pm at the Kalanimoku Building. Other then the Applicant and Staff, no one from the general public attended the Public Hearing.

CONSERVATION CRITERIA

The following discussion evaluates the merits of the proposed land use by applying the criteria established in Section 13-5-30, HAR.

1. *The proposed land use is consistent with the purpose of the Conservation District.*

The objective of the Conservation District is to conserve, protect and preserve the important natural resources of the State through appropriate management and use to promote their long-term sustainability and the public health, safety, and welfare.

The project is considered an identified land use in the subject area of the Conservation District; as such, it is subject to the regulatory process established in Chapter 183C, HRS and detailed further in Chapter 13-5, HAR. This process provides for the application of appropriate management tools to protect the relevant resources, including objective analysis and thoughtful decision-making by the Department and Board of Land and Natural Resources.

The purpose of the project is to provide a facility for operational marine activities that includes the construction of new vessels and the repair and maintenance of identified maritime vessels. The project is located in an extensively disturbed area in a locality with similar shipping facilities. The project has a number of mitigation measures that are proposed to conserve and preserve the natural resources within the Conservation District portion of this project.

As such, Staff believes that the project is not inconsistent with the purpose of the Conservation District.

2. *The proposed land use is consistent with the objectives of the subzone of the land on which the use will occur.*

The objective of the Resource subzone is to develop, with proper management, areas to ensure sustained use of the natural resources of those areas. The proposed use is an identified land use pursuant to the Hawaii Administrative Rules, §13-5-22, R-6 Marine Construction. This particular area is submerged land located near a Small Boat Harbor and Honolulu Harbor. The shipyard facility is proposed at a previously impacted area. Through mitigative measures and water quality monitoring, the natural resources hopefully will be sustained.

3. *The proposed land use complies with provisions and guidelines contained in Chapter 205A, HRS, entitled "Coastal Zone Management," where applicable.*

On November 12, 2008, the Honolulu City Council approved Special Management Area Use Permit (2008/SMA-42) for the Honolulu Marine Commercial Shipyard.

Staff believes the proposal complies with the provisions and guidelines of Chapter 205A as mitigation and monitoring is proposed for the ocean resource, recreation in the area will not be compromised, the development is compatible with other facilities in the area and the proposal provides facilities important to the State's economy in a suitable location.

4. *The proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community, or region.*

Staff believes the proposed land use will not cause substantial adverse impacts to existing natural resources within the surrounding area, community or region. A coral protection plan is required to mitigate against adverse impacts to corals.

5. *The proposed land use, including buildings, structures and facilities, shall be compatible with the locality and surrounding area, appropriate to the physical conditions and capabilities of the specific parcel or parcels.*

The proposed ship yard is consistent with other uses of the nearby area, that include numerous boat moorings, a small boat harbor and ramp facility and the numerous commercial piers of Honolulu Harbor. The proposed land use is compatible with the locality and surrounding area and is appropriate to the physical conditions and capabilities of the partially submerged parcel. The proposal does not change the existing use of the area as an industrial waterfront.

6. *The existing physical and environmental aspect of the land, such as natural beauty and open space characteristics, will be preserved or improved upon, which ever is applicable.*

The area has been heavily industrialized and it is unlikely that this project will create adverse impacts to the existing physical and environmental aspect of the land. The applicant will be required to do a coral management plan and water quality monitoring.

7. *Subdivision of the land will not be utilized to increase the intensity of land uses in the Conservation District.*

There will be no subdivision of land for this proposed project.

8. *The proposed land use will not be materially detrimental to the public health, safety and welfare.*

The proposed location of the shipyard in an industrial waterfront area is located away from residential uses. BMPs and other mitigation measures shall be implemented during construction and operation of the facility to minimize impacts to the surrounding environment including the use of silt and dust fencing, berms, storm water and industrial BMPs and other practices as required by Federal, State and County of Honolulu regulations.

DISCUSSION

Man made changes have transformed this area extensively from a wetland lagoon to an industrial waterfront. The site provides for deep-water access in an industrial setting that is suitable for a shipyard. Because of existing industrial land uses and nearby structures associated with adjoining maritime uses, and the scale of the facility in relation to adjacent structures (Fuel storage tank yards), the proposed project is not expected to significantly impact or degrade the existing shoreline area and views.

OHA notes the closing off of the shoreline and that an access easement on both sides of the project area is proposed. OHA recommends this be a condition of the permit. In addition, OHA has made several suggestions for permit conditions regarding soil sampling, stringent BMPs, and water quality monitoring. Staff notes the existing ocean resources will be monitored thru other required Federal and State agency permits. Mitigation measures to ensure protection of water quality will be provided through the various permits administered by the Department of Health under the National Pollutant Discharge Elimination System (NPDES) permits (Discharges of Storm Water Associated With Industrial Activities, Discharges of Storm Water Associated With Construction Activities, Hydro-testing Discharges, Discharges Associated With Construction Activity Dewatering) and the Section 41 Water Quality Certification. In addition, the Department of the Army permits for Section 404, Clean Water Act and the Section 10, Rivers and Harbors Act also reviews mitigation measures to address aquatic environmental concerns. These permits incorporated BMPs and good housekeeping practices during and after construction to minimize adverse impacts to the marine environment.

In addition, the Applicant has stated that a Coral Protection Plan will be prepared separately for review by DAR. Although the specific schedule for preparation of the study and plan is not finalized, the document will prescribe the following:

1) Quantitative evaluation, including mapping, of coral coverage at the site;
2) An assessment of the direct and indirect potential for construction and post-construction impacts;
3) The development of appropriate mitigative measures including the use of silt screens, coral relocation/transplantation, or other measures as coordinated through the DAR. Ideally, the best situation will be to allow the installation of silt screens during construction. Only if it is unavoidable, would relocation or transplantation be considered; and
4) Monitoring to ensure the performance of the mitigation measures.

Furthermore, DOBOR determined that the subject site is suitable property to relocate the shipyard facility from Kewalo Basin and the 2005 Legislature approved the lease of submerged lands at the site to HM LLC/ pursuant to Senate Concurrent Resolution 134, SD1, HD1, Session Laws of Hawaii 2005.

Staff believes the requirements of authorization by government agencies mitigate the direct and potential impacts to the aquatic resources. The co-location of being near other shipping facilities decreases impacts to other localities and the collective agreement of the use of this site as a shipyard support this application.

RECOMMENDATION:

Based on the preceding analysis, staff recommends that the Board of Land and Natural Resources APPROVE this application for the Honolulu Marine Shipyard located at the Kalihi Channel outlet of Honolulu Harbor, south end of the Keehi Small Boat Harbor on the island of Oahu subject to the following conditions:

1. The applicant shall comply with all applicable statutes, ordinances, rules, regulations, and conditions of the Federal, State, and County governments, and applicable parts of the Hawaii Administrative Rules, Chapter 13-5;

2. The applicant, its successors and assigns, shall indemnify and hold the State of Hawaii harmless from and against any loss, liability, claim or demand for property damage, personal injury or death arising out of any act or omission of the applicant, its successors, assigns, officers, employees, contractors and agents under this permit or relating to or connected with the granting of this permit;

3. The applicant shall obtain a land disposition from the Department for the occupancy of State lands;

4. The applicant shall comply with all applicable Department of Health administrative rules the includes the varies permits administered by the Department of Health under the National Pollutant Discharge Elimination System (NPDES) permits (Discharges of Storm Water Associated With Industrial Activities, Discharges of Storm Water Associated With Construction Activities, Hydro-testing Discharges, Discharges Associated With Construction Activity Dewatering) and the Section 41 Water Quality Certification;

5. Before proceeding with any work authorized by the Board, the applicant shall submit four (4) copies of the construction plans and specifications to the Chairperson or his authorized representative for approval for consistency with the conditions of the permit and the declarations set forth in the permit application. Three (3) of the copies will be returned to the applicant. Plan approval by the Chairperson does not constitute approval required from other agencies;

6. Any work done or construction to be done on the land shall be initiated within one year of the approval of such use, in accordance with construction plans that have been signed by the Chairperson, and, unless otherwise authorized, shall be completed within three (3) years of the approval. The applicant shall notify the Department in writing when construction activity is initiated and when it is completed;

7. All representations relative to mitigation set forth in the accepted environmental assessment or impact statement for the proposed use are incorporated as conditions of the permit;

8. The applicant understands and agrees that this permit does not convey any vested rights or exclusive privilege;

9. In issuing this permit, the Department and Board have relied on the information and data that the applicant has provided in connection with this permit application. If, subsequent to the issuance of this permit, such information and data prove to be false, incomplete or inaccurate, this permit may be modified, suspended or revoked, in whole or in part, and/or the Department may, in addition, institute appropriate legal proceedings;

10. Where any interference, nuisance, or harm may be caused, or hazard established by the use, the applicant shall be required to take the measures to minimize or eliminate the interference, nuisance, harm, or hazard;

11. An access easement to the shoreline on the east side of the site shall be required;

12. Prior to construction plan approval, a coral protection plan must be approved by the Department;

13. Should historic remains such as artifacts, burials or concentration of charcoal be encountered during construction activities, work shall cease immediately in the vicinity of the find, and the find shall be protected from further damage. The contractor shall immediately contact HPD (692-8015), which will assess the significance of the find and recommend an appropriate mitigation measure, if necessary;

14. The applicant acknowledges that the approved work shall not hamper, impede or otherwise limit the exercise of traditional, customary or religious practices in the immediate area, to the extent such practices are provided for by the Constitution of the State of Hawaii, and by Hawaii statutory and case law;

15. Other terms and conditions as may be prescribed by the Chairperson; and

16. Failure to comply with any of these conditions shall render this Conservation District Use Permit null and void.

Respectfully submitted,

K. Tiger Mills, Staff Planner
Office of Conservation and Coastal Lands

Approved for submittal:

Laura H. Thielen, Chairperson
Board of Land and Natural Resources

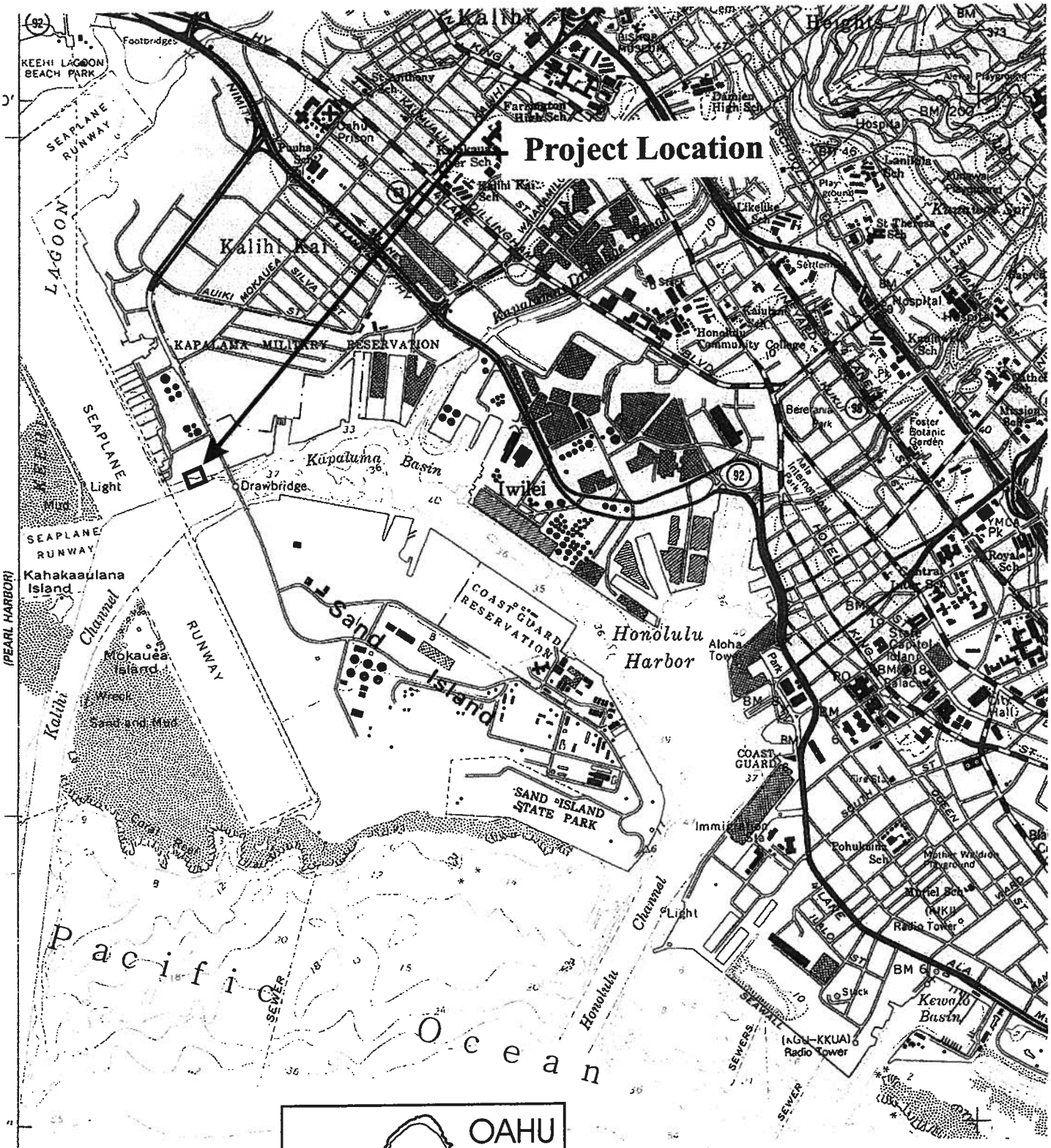
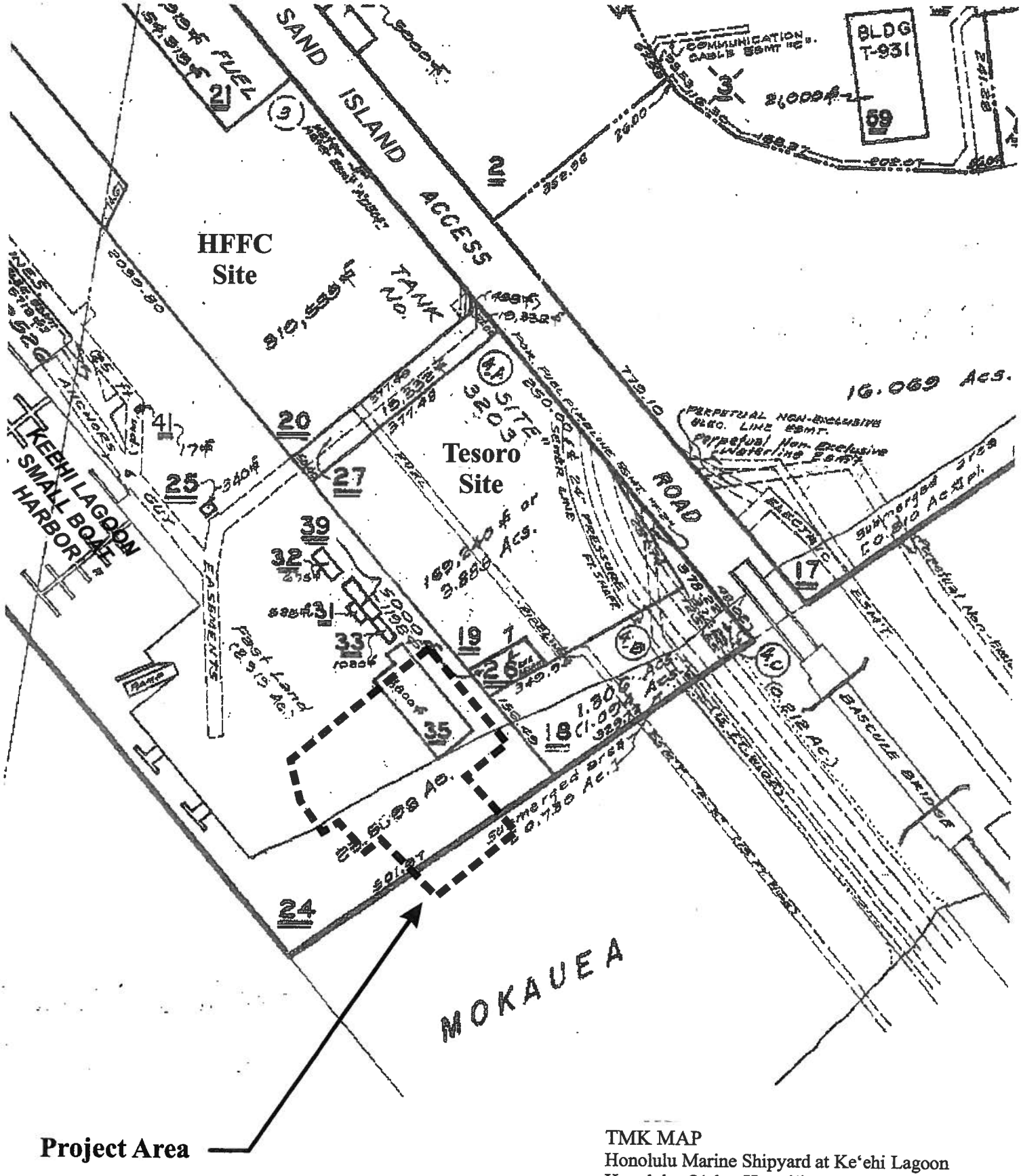


FIGURE 1
PROJECT LOCATION
Honolulu Marine Shipyard at Ke'ehi Lagoon
Honolulu, O'ahu, Hawai'i

R. M. TOWILL CORPORATION
March 2007

EXHIBIT I



TMK MAP
Honolulu Marine Shipyard at Ke'ehi Lagoon
Honolulu, O'ahu, Hawai'i

0 200 Feet 400

R. M. TOWILL CORPORATION March 2007

EXHIBIT 2

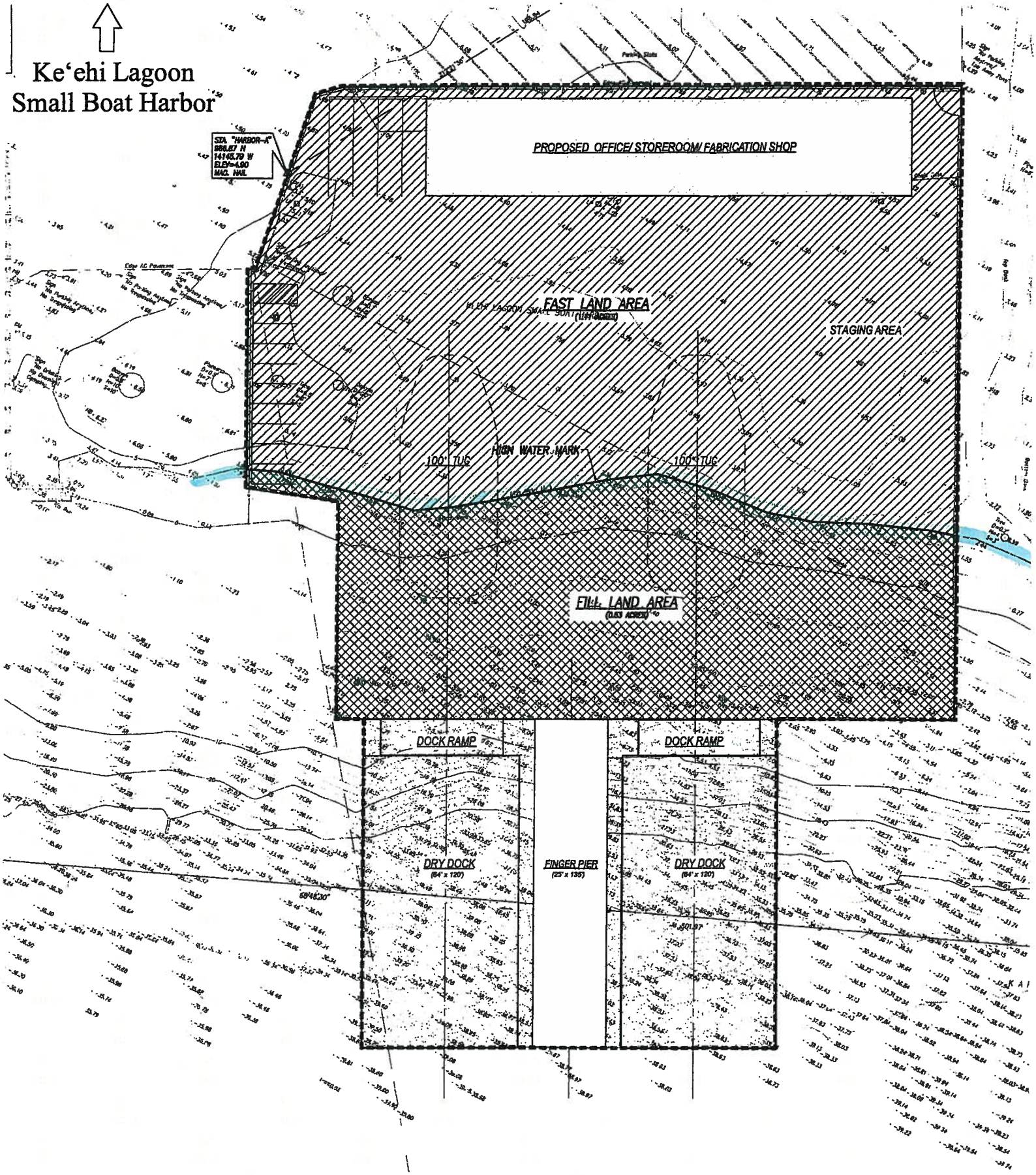
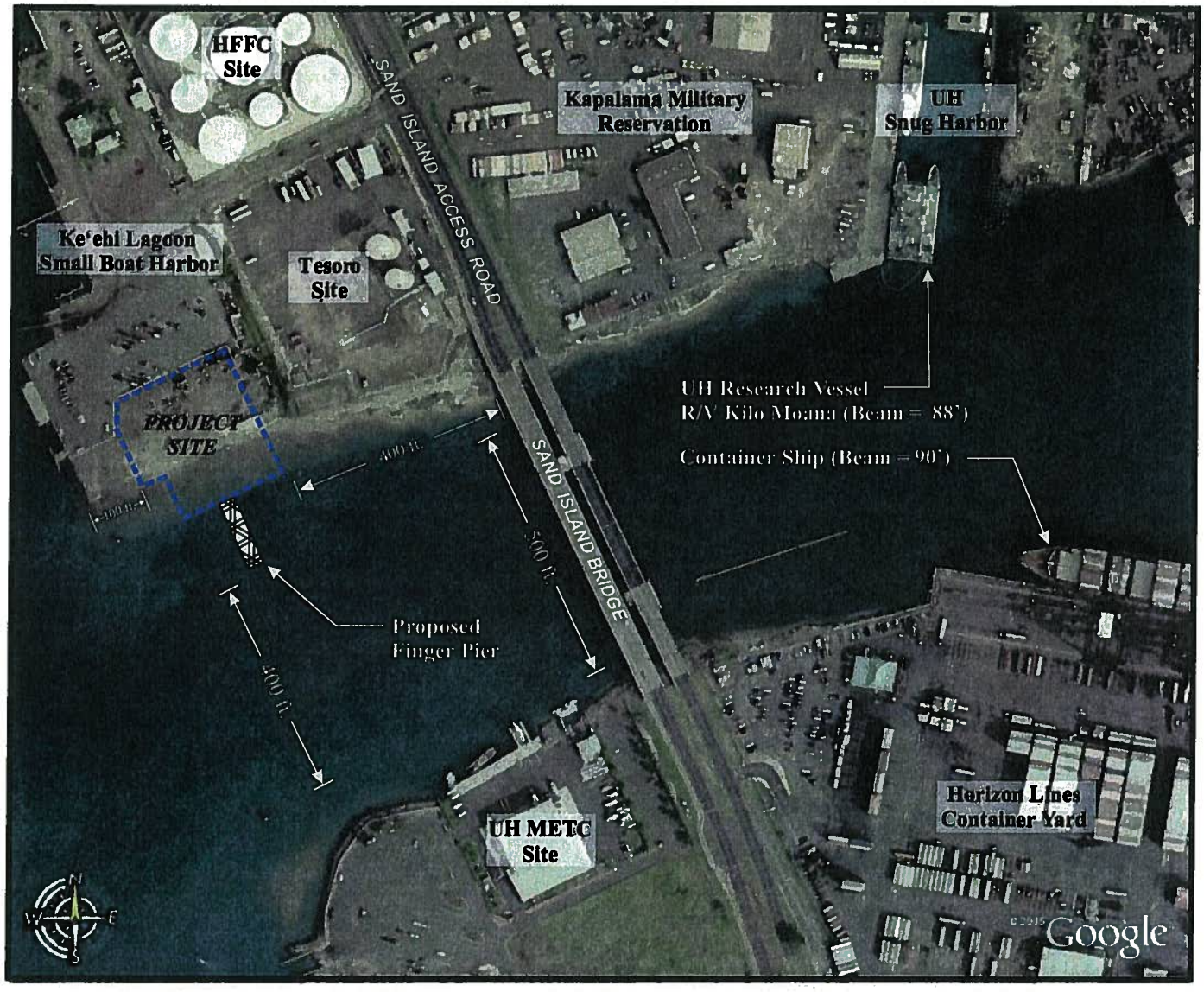

Ke'ehi Lagoon
Small Boat Harbor
PROPOSED OFFICE/ STOREROOM/ FABRICATION SHOP
STA. "HARBOR-A"
699,857 N
14145.79 W
ELEV=4.90
MAG. NAIL
FAST LAND AREA
STAGING AREA
100' TUG
HIGH WATER MARK
100' TUG
FILL LAND AREA
DOCK RAMP
DOCK RAMP
DRY DOCK
(64' x 120')
FINGER PIER
(25' x 135')
DRY DOCK
(64' x 120')

EXHIBIT 3



KALIHI CHANNEL ACCESS
Honolulu Marine Shipyard at Ke'ehi Lagoon
Honolulu, Oahu, Hawaii

0 300 Feet 600

R. M. TOWILL CORPORATION April 2008

EXHIBIT 4

View from Bridge Facing West

EXHIBIT 5

EXISTING CONDITION
Honolulu Marine Shipyard at Ke'ehi Lagoon
Honolulu, O'ahu, Hawai'i

R. M. TOWILL CORPORATION March 2007

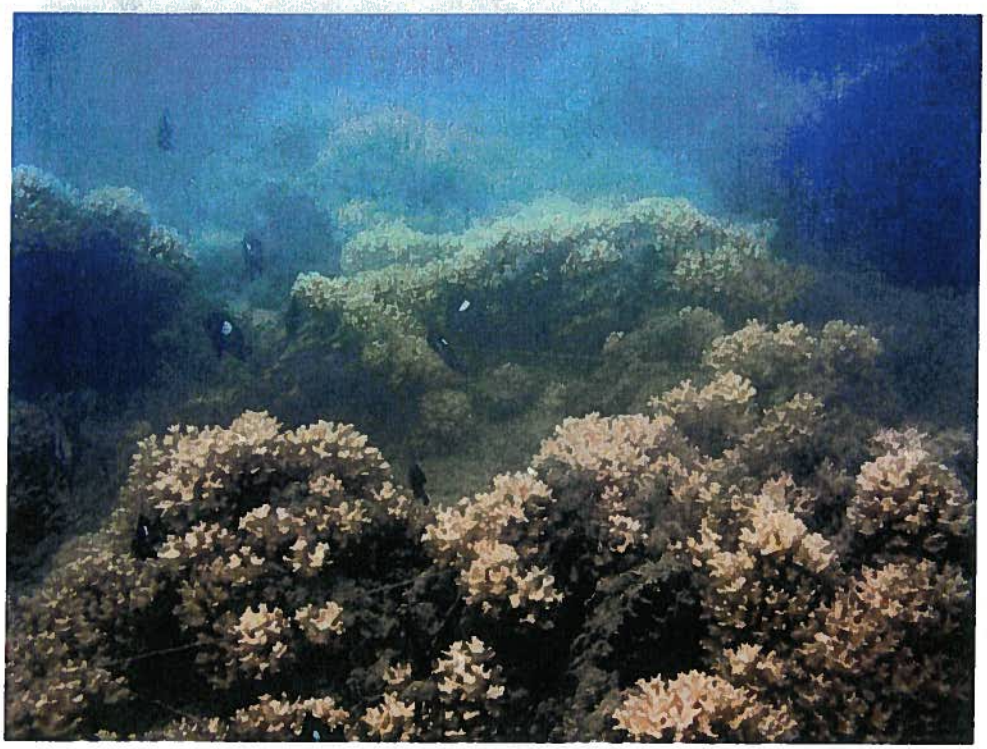


Figure 3. Coral assemblage of *Pocillapora damicormis* with *Dascyllus albisella* off the southern most point of the site.

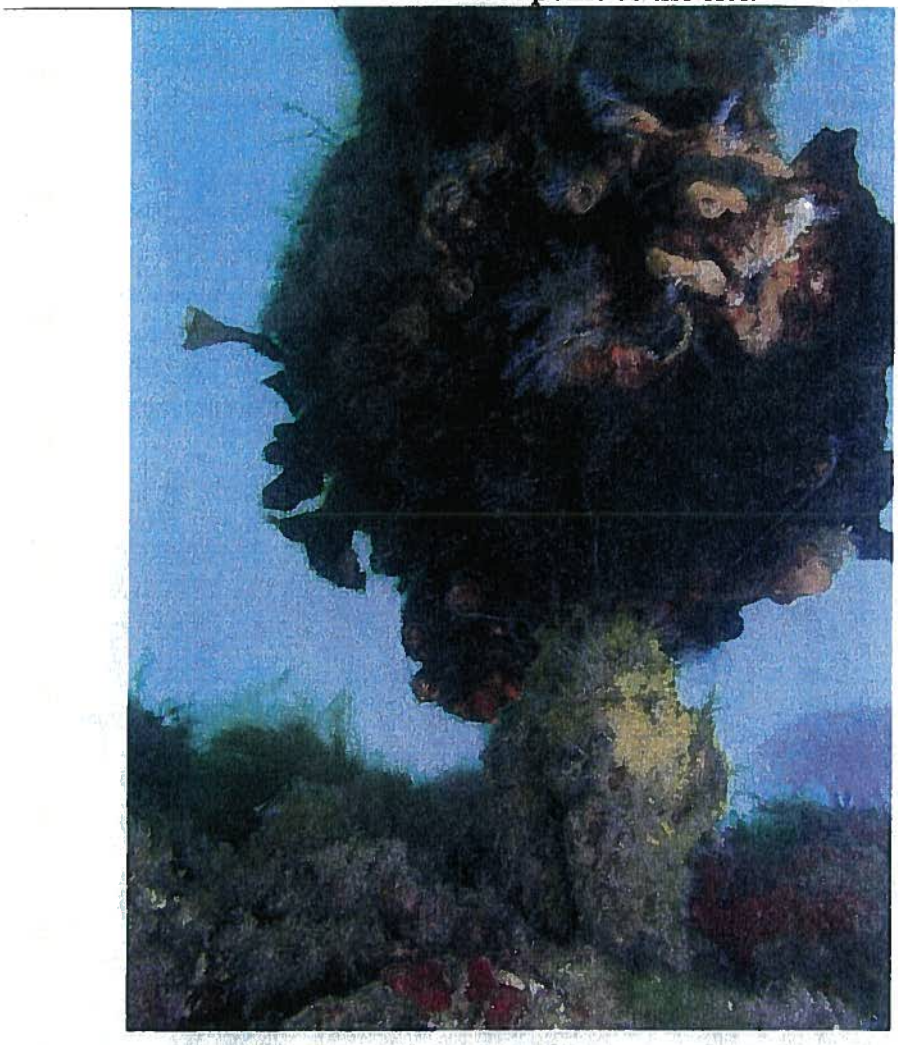
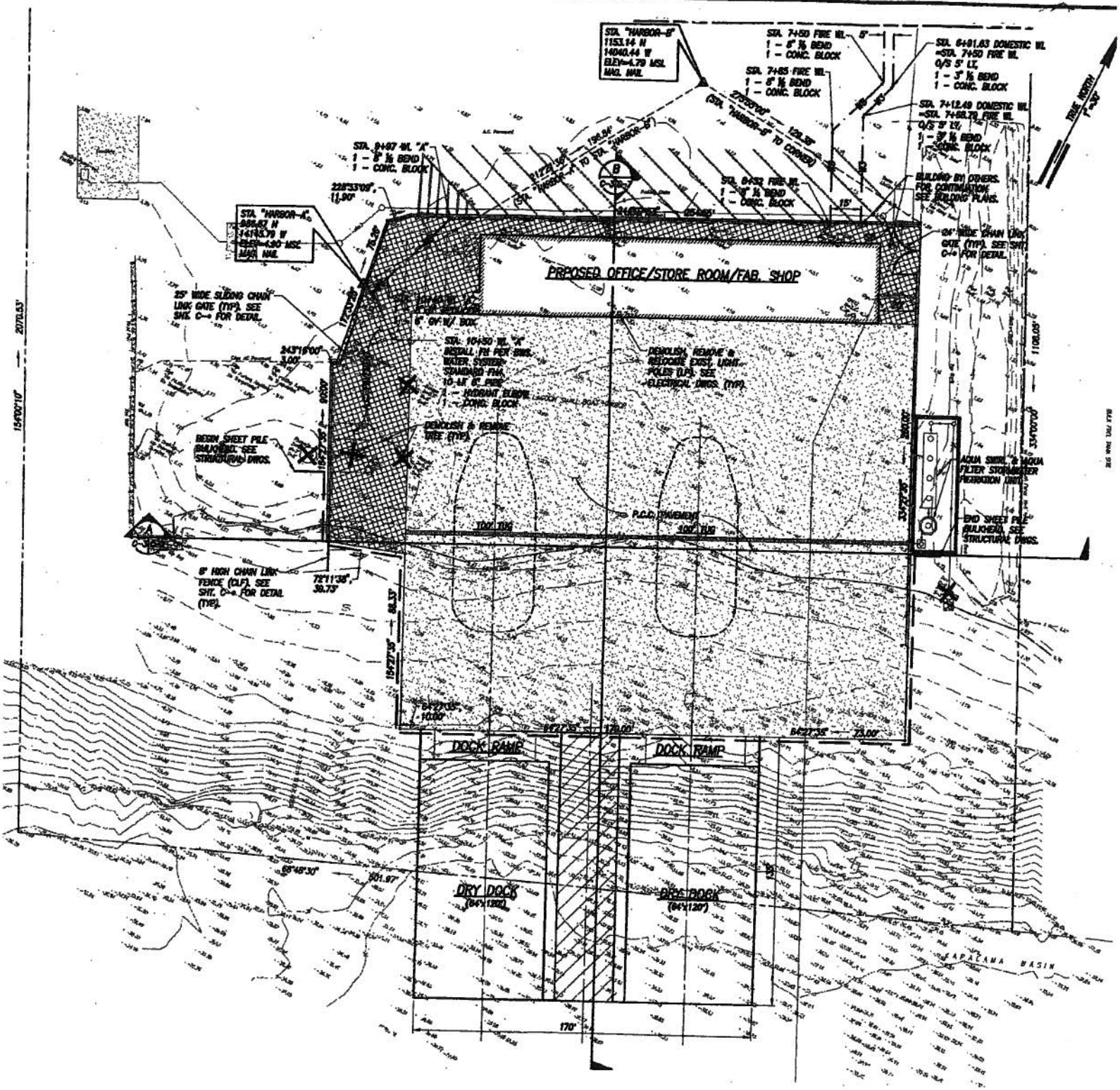


Figure 4. Various marine invertebrates attach to buoys and channel markers off the site.

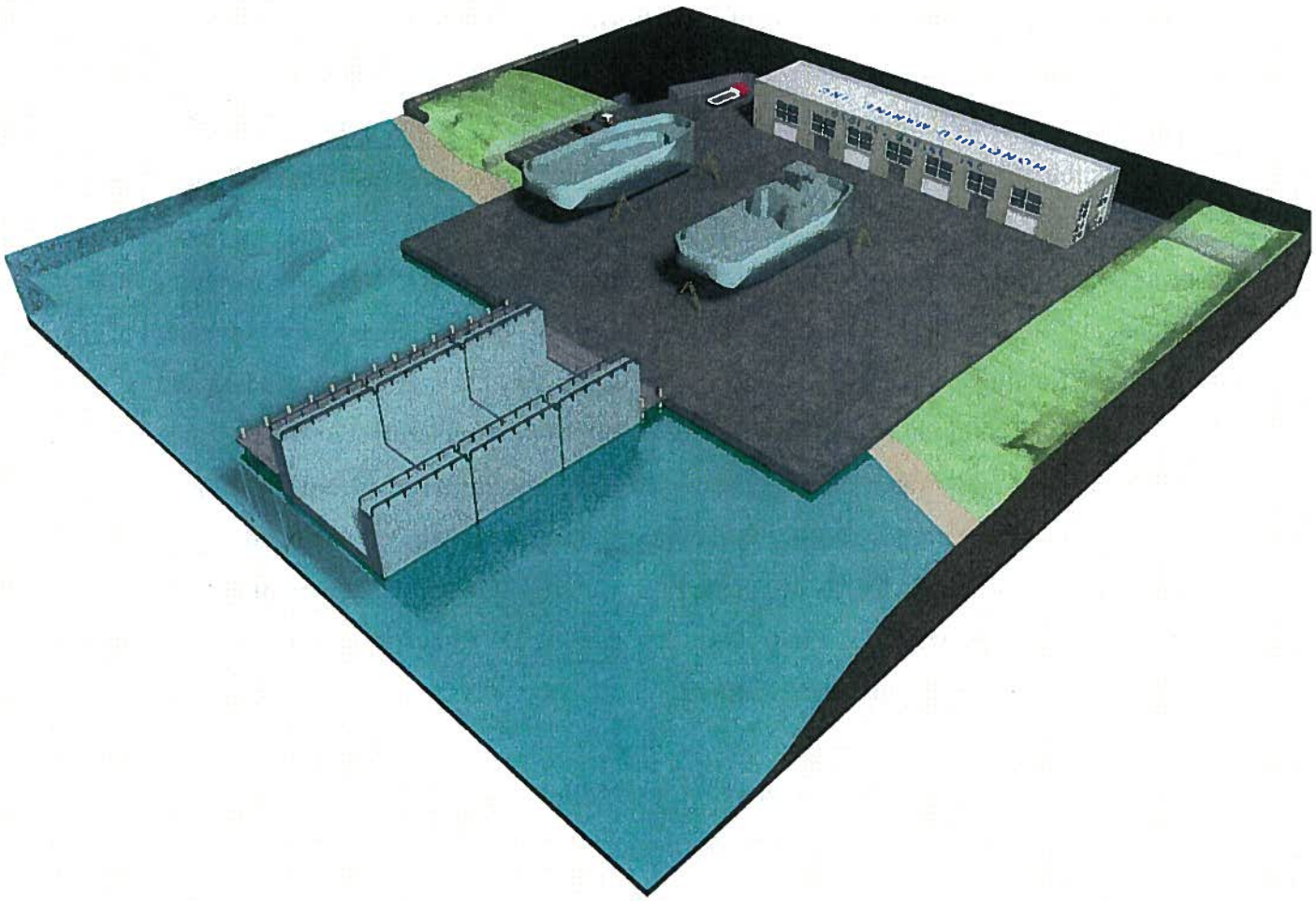
EXHIBIT 6



SITE LAYOUT & UTILITY PLAN

SCALE: 1"=30'

EXHIBIT 7



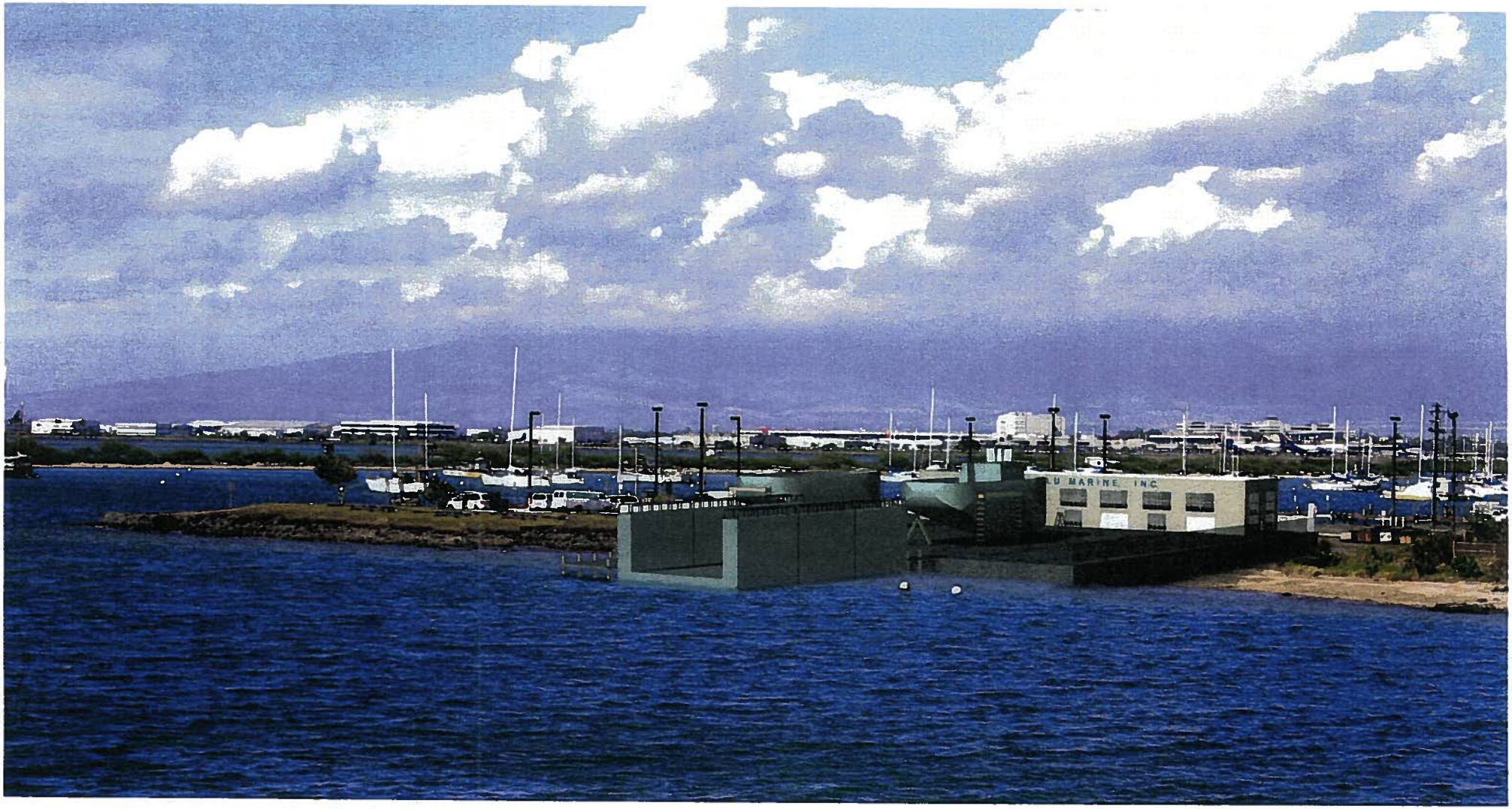
3D View Mauka
Honolulu Marine Shipyard at Ke'ehi Lagoon
Honolulu, O'ahu, Hawai'i

Not to Scale

R. M. TOWILL CORPORATION

March 200

EXHIBIT 8



View from Bridge Facing West

EXHIBIT 9

PROPOSED CONDITION
Honolulu Marine Shipyard at Ke'ehi Lagoon
Honolulu, O'ahu, Hawai'i

R. M. TOWILL CORPORATION March 2007